

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WESTERN NATIONAL MUTUAL
INSURANCE COMPANY, a foreign Insurer,

Plaintiff,

vs.

NATURAL CREATIONS POOLS, LLC, a
Washington limited liability company;
EDWARD CASEY CASTILLO d/b/a
NATURAL CREATIONS POOLS, INC.,

Defendants.

Cause No. 2:24-cv-1405

COMPLAINT

Plaintiff Western National Mutual Insurance Company (“Western National”) states and pleads as follows:

I. PARTIES

1.1 Western National is a Minnesota corporation with a principal place of business in Minnesota.

1.2 On information and belief, Natural Creations Pools, LLC (“Natural Creations”) is a Washington limited liability corporation with a principle place of business in the state of Washington whose members are citizens of the state of Washington.

1 1.3 On information and belief, Edward Casey Castillo is a citizen of the state of
2 Washington.

3 1.4 Natural Creations and Edward Casey Castillo are referenced collectively herein
4 as “Defendants.”

5 II. JURISDICTION AND VENUE

6 2.1 This action is between citizens of different states.

7 2.2 The amount in controversy exceeds the sum or value of \$75,000, exclusive of
8 interest and costs, as set forth more particularly below.

9 2.3 This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a).

10 2.4 An actual justiciable controversy exists between Western National and
11 Defendants within the meaning of 28 U.S.C. § 2201, *et seq.* regarding the scope and extent of
12 insurance coverage provided under the Western National policies, as set forth more particularly
13 below.

14 2.5 Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that a
15 substantial portion of the events giving rise to the insurance claim occurred in this District.

16 III. GENERAL ALLEGATIONS

17 3.1 Western National issued policy number CPP 0010394 18, with a policy period
18 of October 1, 2020 through October 1, 2021 to named insured Natural Creations (the “2020
19 Policy”). A certified copy of the 2020 Policy is **Exhibit 1** hereto (with redactions).

20 3.2 Western National issued policy number CPP 0010394 19, with a policy period
21 of October 1, 2021 through October 1, 2022 to named insured Natural Creations (the “2021
22 Policy”). A certified copy of the 2021 Policy is **Exhibit 2** hereto (with redactions).

1 3.3 Western National issued policy number CPP 0010394 20, with a policy period
2 of October 1, 2022 through October 1, 2023 to named insured Natural Creations (the “2022
3 Policy”). A certified copy of the 2022 Policy is **Exhibit 3** hereto (with redactions).

4 3.4 Western National issued policy number CPP 0010394 21, with a policy period
5 of October 1, 2023 through October 1, 2024 to named insured Natural Creations (the “2023
6 Policy”). A certified copy of the 2023 Policy is **Exhibit 4** hereto (with redactions).

7 3.5 The 2020 Policy, 2021 Policy, 2022 Policy, and 2023 Policy will be referred to
8 collectively as the “Policies.”

9 3.6 Defendants were sued in the underlying lawsuit of *Bomgardner v. Castillo, et*
10 *al.*, King County Superior Court Cause No. 24-2-09903-4 SEA (“Underlying Lawsuit”). A
11 copy of the Underlying Complaint is **Exhibit 5** hereto.

12 3.7 The Underlying Complaint alleges damages “in an amount, exclusive of interest,
13 exceeding \$400,000” in paragraph 3.12.

14 3.8 Defendants tendered defense and indemnity of the Underlying Lawsuit to
15 Western National under the Policies.

16 3.9 Western National has agreed to defend Defendants under a reservation of rights
17 under the Policies.

18 **IV. THE WESTERN NATIONAL POLICIES**

19 4.1 The Policies’ Insuring Agreement provides, in part, as follows:

20 **SECTION I – COVERAGES**

21 **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE** 22 **LIABILITY**

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

* * *

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “personal and advertising injury” to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or “suit” that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

4.2 The Policies also contain the following exclusions applicable to Coverage A, Bodily Injury and Property Damage Liability (“Coverage A”):

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

* * *

l. Damage To Your Work

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

4.3 The Policies also contain the following exclusions for Coverage B, Personal and Advertising Injury Liability (“Coverage B”):

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

“Personal and advertising injury” caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury”.

* * *

f. Breach Of Contract

“Personal and advertising injury” arising out of a breach of contract, except an implied contract to use another’s advertising idea in your “advertisement”.

4.4 By endorsement, the Policies provide in part:

Item **2. Exclusions**, Paragraph **j.** is replaced by the following:

j. Damage To Property

“Property damage” to:

* * *

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.

* * *

Paragraphs **(3)**, **(4)**, **(5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

* * *

Paragraph **(6)** of this exclusion does not apply to “property damage” included in the “products-completed operations hazard”.

The insurance provided for “property damage” from the use of elevators and for “property damage” to borrowed equipment is excess over any other valid and collectible property insurance (including any deductible portion thereof) available to the insured whether primary, excess, contingent or on any other basis.

4.5 By endorsement, the Policies provide in part:

Punitive Damages

This insurance does not apply to punitive or exemplary damages. However, in the event an insured is alleged to be legally liable for both compensatory damages and punitive damages, if we provide a defense to the claim for compensatory damages, we will also provide a defense to the claim for punitive damages.

V. CLAIM FOR DECLARATORY RELIEF

5.1 Western National incorporates by reference the allegations of all paragraphs above as if fully alleged herein.

5.2 In accordance with 28 U.S.C. § 2201, Western National seeks a ruling from this Court that the Policies do not provide coverage for the Underlying Lawsuit.

5.3 An actual justiciable controversy exists between Western National and Defendants concerning whether there is insurance coverage under the Policies for the claims asserted in the Underlying Lawsuit.

5.4 The Policies do not provide coverage for the claims in the Underlying Lawsuit under the policy language including, but not limited to, the following potentially applicable policy provisions or legal grounds:

- (a) The claims may not come within the Coverage A Insuring Agreement;
- (b) The claims may not come within the Coverage B Insuring Agreement;
- (c) The claims may come within one of the Coverage A exclusions;
- (d) The claims may come within one of the Coverage B exclusions;
- (e) To the extent that the claims regard punitive damages, the punitive damages exclusion may apply; and
- (f) Under other such further policy language or grounds that may restrict or preclude coverage under the Policies or under law.

1 5.5 The Policies provide for reimbursement of defense costs where claims are
2 uncovered.

3 **VI. CLAIM FOR REIMBURSEMENT OF DEFENSE COSTS INCURRED**

4 6.1 Western National incorporates by reference the allegations of all paragraphs
5 above as if fully alleged herein.

6 6.2 By endorsement, the Policies state in part:

7 If we initially defend an insured (“insured”) or pay for an insured’s (“insured’s”)
8 defense but later determine that none of the claims (“claims”), for which we
9 provided a defense or defense costs, are covered under this insurance, we have the
10 right to reimbursement for the defense costs we have incurred.

11 6.3 Western National is entitled to reimbursement of all defense costs it has paid in
12 connection with its defense of Defendants in the Underlying Lawsuit.

13 **VII. RESERVATION OF RIGHT TO AMEND**

14 7.1 Western National reserves the right to amend its Complaint, in whole or in part,
15 as it obtains additional facts through investigation and discovery.

16 **VIII. PRAYER FOR RELIEF**

17 8.1 Wherefore, Western National prays for judgment as follows:

18 (a) That the Court render declaratory judgment in favor of Western
19 National;

20 (b) That the Court declare the rights, duties, obligations, status, and other
21 legal relations of the parties, including a declaration that there is no insurance coverage under
22 the Policies, that Western National has no duty to defend or indemnify for the claims in the
23 Underlying Lawsuit, that Western National may withdraw from the defense of the Underlying
Lawsuit;

- 1 (c) That the Court declare that Western National is entitled to
2 reimbursement of defense costs as provided for in the Policies;
- 3 (d) That the Court award reimbursement of defense costs;
- 4 (e) For all of Western National's costs and disbursements incurred herein;
5 and
- 6 (f) For such relief as the Court may deem just and proper.

7 DATED this 4th day of September, 2024.

8 SOHA & LANG, P.S.

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